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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/829,542 | 04/22/2004 | John C. Martin | 68,161-014 | 7326 |
| 27305 7590 11/29/2007 HOWARD & HOWARD ATTORNEYS, P.C. THE PINEHURST OFFICE CENTER, SUITE #101 39400 WOODWARD AVENUE BLOOMFIELD HILLS, MI 48304-5151 | | | EXAMINER GROSSO, HARRY A | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/829,542

Applicant(s)

MARTIN, JOHN C.

Examiner

Harry A. Grosso

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 15-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because the lines, number and letters are not uniformly thick and well defined, some numbers and reference characters are not plain and legible. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 6-9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Atwell (685,736).
3. Regarding claim 6, Atwell discloses an apparatus capable of being used to soak wood chips or chunks with a container (5, Figures 1-3) having a sidewall, a bottom and a removable lid (12, Figure 3) with holes. The sidewall of the container defines threads (8) on the inside of the container for engaging the lid and would allow for some adjustment of the distance between the lid and the bottom surface depending on how far in the lid was threaded.
4. Regarding claim 7, the container is constructed from heat resistant material since it is designed to be exposed to heat (page 1, lines 58-64).
5. Regarding claim 8, the apparatus is adapted to contain liquid in the body of the container (1).
6. Regarding claim 9, the sidewall of the container has at least one aperture (11).
7. Regarding claim 14, lid has a lip (13) for engaging the threads on the container.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagorio in view of Fisher, both of record.

10. Regarding claims 1 and 12, Lagorio discloses an apparatus capable of being used to soak wood chips or chunks with a container (Figures 1 and 3) with a sidewall and a bottom surface defining an opening opposite the bottom surface, and a removable lid (11) having at least one aperture (5). Lagorio further discloses a plurality of horizontal grooves (12, Figure 3) and tabs (15) used to lock the lid in position. Lagorio does not teach the tabs being attached to the lid or vertical grooves in which the tabs can slide. Fisher discloses an adjustable volume container in which the movable top section (lid) has tabs attached that move in vertical first and second grooves that extend from the top opening in the container and engage horizontal grooves to change the vertical height of the container top (Figures 1-5, page 1, lines 62-70). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the concept of tabs attached to the adjustable top section (lid) and vertical grooves for movement of the tabs as disclosed by Fisher in the apparatus disclosed by Lagorio to allow adjustment of the height of the lid with the tabs attached as part of the lid eliminating the need for separate tabs which require an extra operation to lock in the lid and which can be misplaced.

11. Regarding claim 2, the container includes means to retain the fluid entirely within the container, the sidewall and the bottom.

12. Regarding claim 3, the apparatus includes a means to permit the liquid to pass into the container when it is immersed and drain out when is no longer immersed, the holes (5) in the lid.

13. Regarding claim 4, the wood chips or chunks can be maintained in a totally submerged state by adjusting the lid position through movement of the lid within the grooves of Lagorio as modified by Fisher.

14. Regarding claim 5, Fisher discloses a handle and it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the concept of a handle as disclosed by Fisher in the apparatus disclosed by Lagorio to allow the apparatus to be more easily carried.

15. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lagorio as modified by Fisher in view of Rosler (4,046,279). Lagorio as modified by Fisher discloses the invention except for the detent in the horizontal groove. Rosler discloses an apparatus with a lid (2, Figure 1) with tabs (9) and a container (1) with a vertical groove (3) and horizontal grooves (4), the horizontal grooves having a detent (14, Figures 6 and 7, column 6, lines 16-20) to lock the tab in the groove. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a detent in the horizontal grooves as disclosed by Rosler in the apparatus disclosed by Lagorio as modified by Fisher to lock the tab in the groove.

16. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atwell in view of Harbour et al (5,910,162) (Harbour). Atwell discloses the invention except for the container having an aperture in the bottom surface. Harbour discloses a similar

apparatus capable of soaking wood chips with a container (20, Figures 1-3) having an adjustable height lid (22) and an aperture (34) in the bottom surface of the container for draining liquid from the container (column 7, lines 29-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an aperture in the bottom surface as disclosed by Harbour in the apparatus disclosed by Atwell to allow efficient drainage of liquid from the container.

17. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atwell as modified by Harbour in view of Bateman et al (4,147,227) (Bateman). Atwell as modified by Harbour discloses the invention including a projection on the bottom surface of the container as seen in Figure 3 of Harbour but does not teach the use of legs on the container. Bateman discloses an apparatus capable of being used to soak wood chips with a container (14, Figure 5) having apertures in the bottom surface (42) and legs (40, column 1, line 65 to column 2, line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of legs on the bottom of the container as disclosed by Bateman in the apparatus disclosed by Atwell as modified by Harbour to allow efficient drainage of liquid from the container through the bottom aperture by raising the aperture above a support surface on which the container may be placed.

Response to Arguments

18. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed; and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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